

LAZY S RANCH PROPERTIES vs VALERO TERMINATING AND DISTRIBUTION
Nancy Coleman 08/24/2022

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA

Exhibit

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LAZY S RANCH PROPERTIES,
LLC, an Oklahoma Limited
Liability Company,

Plaintiff,

v.

VALERO TERMINATING AND
DISTRIBUTION COMPANY;
VALERO PARTNERS OPERATING
CO. LLC; and VALERO
PARTNERS WYNNEWOOD, LLC,

Defendants.

Case No. CIV-19-425-RAW

VIDEO DEPOSITION OF NANCY COLEMAN, PhD
TAKEN ON BEHALF OF THE PLAINTIFF
IN OKLAHOMA CITY, OKLAHOMA
ON AUGUST 24, 2022

REPORTED BY JILL TUCKER SHAW, CSR #1459

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<p style="text-align: right;">Page 58</p> <p>1 A. There were a few trace quantities of TPH DRO 2 found in the soil. 3 Q. And you -- did you discuss that in your 4 report? 5 A. Yes, I did. 6 Q. Okay. Because -- and what was your -- what 7 was your opinion about those diesel quantities found 8 in the soil? 9 A. They were below the evaluative human health 10 criteria that I was using to evaluate the soil data, 11 and so therefore I did not consider them to be 12 significant. 13 Q. But they weren't zero; correct? 14 A. No. There were some non zeroes, but I also 15 -- it's possible, given the low number -- the low 16 concentrations that those may actually be a product 17 of naturally occurring carbon compounds which are in 18 the same range as C ranges. 19 Q. Okay. Doctor, are you an analytical 20 chemist? 21 A. No, I am not. 22 Q. Okay. Did you -- do you know how to run a 23 mass spectrometer? 24 A. No, I do not. 25 Q. Okay. Did you -- were you asked to evaluate</p>	<p style="text-align: right;">Page 59</p> <p>1 any of these things as an analytical chemist? 2 A. No, I was not. 3 Q. And I believe you've already stated, and I 4 just want to make it clear, you didn't perform any of 5 the laboratory testing yourself on this; correct? 6 A. No, I did not. 7 Q. Okay. So this could have been naturally 8 occurring diesel? 9 A. No. It could have been naturally occurring 10 compounds that occur in this -- that show up in a 11 total petroleum hydrocarbon DRO analysis, because 12 they are in the carbon range that that particular 13 analysis covers. 14 Q. So -- 15 A. And depending on the method and the cleanup 16 that takes place in the lab -- and to do that, to 17 look at those issues, you'd need to look at the 18 chromatograms. And I believe another expert looked 19 at the chromatograms. That is not my area of 20 expertise. I deal in concentration only. 21 Q. Okay. In all your review of data, did you 22 find any source of metals, toxic metals, that caused 23 you any concern? 24 A. That -- in a few of the soil samples that 25 were actually analyzed for metals, there were a few</p>
<p style="text-align: right;">Page 60</p> <p>1 what would be considered naturally-occurring metals 2 here in Oklahoma. I looked at those in comparison to 3 what are the accepted median background soil levels 4 for metals in Oklahoma, and they were all below that. 5 Q. Okay. Let's just talk about one of them, 6 like barium by chance. 7 You find barium is naturally occurring in 8 most Oklahoma soil? 9 A. Most all Oklahoma soils have measurable 10 levels of barium. 11 Q. Do you find higher measurable levels of 12 barium where oil and gas production has occurred? 13 A. That is not necessarily a true statement. 14 Q. What about where oil and gas refining has 15 occurred? 16 A. Again, not necessarily a true statement. 17 Q. Where would you expect to find higher levels 18 of barium concentration? 19 A. Depends on the geological formation of the 20 underlying soil. 21 Q. What about the soil at the Lazy S Ranch with 22 a natural karst limestone formation with an aquifer 23 underneath it? Would you expect to find natural 24 barium occurring there? 25 A. I would -- I would expect to find</p>	<p style="text-align: right;">Page 61</p> <p>1 naturally-occurring barium in all soils in Oklahoma. 2 Q. So flip to No. G in your report, Doctor. I 3 want to kind of run through some of your opinions on 4 page 23. 5 And, Doctor, I know we said earlier that 6 you'd ruled out that any of the chemicals or metals 7 you found came from the pipeline, correct, with 8 absolute certainty? 9 A. I don't believe that's what I said. 10 Q. Okay. Put it in your words, not mine. 11 A. I said that given the soil and water data as 12 analyzed, there was no compelling evidence that there 13 had been releases of petroleum hydrocarbons from the 14 pipeline. 15 (Plaintiff's Exhibit No. 43 was marked for 16 identification purposes.) 17 Q. (BY MR. GARRETT) Doctor, I'm going to hand 18 you what's been marked as Plaintiff's Exhibit No. 43. 19 This is a document that was produced by Valero that 20 was part of an Excel spreadsheet that's marked 21 StanTech 00000224. It has to do with the previous 22 release in the pipeline and some of the chemical 23 levels that were around the pipeline release. 24 Can you take a minute and take a look at 25 this document?</p>

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<p style="text-align: right;">Page 74</p> <p>1 A. That is correct.</p> <p>2 Q. And I think -- if I misstate your testimony,</p> <p>3 correct me, please. And you found to -- it was</p> <p>4 present -- some of these things were present, but not</p> <p>5 at significant harmful levels. Is that also correct?</p> <p>6 A. Not at levels which exceeded the established</p> <p>7 health-based evaluative criteria that I was using.</p> <p>8 Q. Right. But it was present?</p> <p>9 A. Yes.</p> <p>10 MR. CANTWELL: Objection.</p> <p>11 Q. (BY MR. GARRETT) Okay. So in your judgment,</p> <p>12 pollution on property owned by another person in</p> <p>13 Oklahoma is okay as long as it's just a little bit?</p> <p>14 MR. CANTWELL: Objection.</p> <p>15 THE WITNESS: That's not what I'm saying.</p> <p>16 Q. (BY MR. GARRETT) Okay. So is it okay to</p> <p>17 pollute just a little bit?</p> <p>18 A. I didn't say that and I wouldn't say that.</p> <p>19 Q. Okay. So you would agree that any pollution</p> <p>20 is bad; correct?</p> <p>21 A. Within the definition of pollution which</p> <p>22 takes into account quantities.</p> <p>23 Q. Okay. Because that -- can that pollution</p> <p>24 lead to contamination?</p> <p>25 MR. CANTWELL: Objection.</p>	<p style="text-align: right;">Page 75</p> <p>1 THE WITNESS: It depends on the conditions.</p> <p>2 Q. (BY MR. GARRETT) How would you define</p> <p>3 contamination, Doctor?</p> <p>4 A. In my practice, typically, it has been</p> <p>5 levels of contaminants which exceed a human health</p> <p>6 evaluative criteria.</p> <p>7 (Plaintiff's Exhibit No. 42 was marked for</p> <p>8 identification purposes.)</p> <p>9 Q. (BY MR. GARRETT) Okay. So, Doctor, I'm</p> <p>10 going to hand you what's been previously marked</p> <p>11 Plaintiff's 42. And sometimes when I'm searching</p> <p>12 through things, I just -- I like to just look at, you</p> <p>13 know, how Merriam-Webster would define a word of</p> <p>14 contaminate. And I just looked at the first version</p> <p>15 of that. They define contaminate as soil, stain,</p> <p>16 corrupt, or infect by contact or association or to</p> <p>17 make inferior or impure by admixture.</p> <p>18 Would you say either one of those terms</p> <p>19 would be relevant here? Definitions?</p> <p>20 A. No. Because in risk assessment, we use the</p> <p>21 concept of concern, and concern relates to exceeding</p> <p>22 a health-based criterion.</p> <p>23 Q. So what you're -- what you're looking at is</p> <p>24 more definition No. 2, to make unfit for use;</p> <p>25 correct?</p>
<p style="text-align: right;">Page 76</p> <p>1 A. Correct.</p> <p>2 Q. But you would agree with me that there was</p> <p>3 some contamination to the water and soil at Lazy S</p> <p>4 Ranch?</p> <p>5 MR. CANTWELL: Objection.</p> <p>6 THE WITNESS: There was certain chemicals</p> <p>7 found at low levels in water and soil. Where they</p> <p>8 came from or whether they were associated with</p> <p>9 naturally-occurring sources of some of that material,</p> <p>10 I cannot tell you.</p> <p>11 Q. (BY MR. GARRETT) Because that was not part</p> <p>12 of your --</p> <p>13 A. That was not part of my review --</p> <p>14 Q. Got it.</p> <p>15 A. -- nor is the data suffi- -- the data</p> <p>16 collected for the site sufficient to make that</p> <p>17 statement.</p> <p>18 Q. The data that you were provided is not</p> <p>19 sufficient to make that statement; correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. So let's -- we were looking at your</p> <p>22 opinions and they were slightly different from the</p> <p>23 ones at the beginning to the end. So flip back to</p> <p>24 page 4 in your opinion, second -- second bullet</p> <p>25 point, where you say, "The soils, as analyzed, are</p>	<p style="text-align: right;">Page 77</p> <p>1 acceptable for the most conservative exposure</p> <p>2 scenarios." Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. So basically, you're stating that the soils</p> <p>5 and waters do not require remediation under Oklahoma</p> <p>6 environmental regulatory agency policies, is that</p> <p>7 correct, based on the data you were provided for your</p> <p>8 analysis?</p> <p>9 A. Based on the data I was provided and my</p> <p>10 analysis of that data, it was my opinion that the</p> <p>11 levels were below evaluative human health criteria</p> <p>12 and therefore there was no need to consider</p> <p>13 remediation.</p> <p>14 Q. But when we looked at the statute 27A</p> <p>15 2-6-105, the statute we looked at earlier, it says</p> <p>16 it's unlawful for any person to cause pollution in</p> <p>17 any waters in the state.</p> <p>18 Is that what that statute says?</p> <p>19 A. That's what that statute says, but 20 -- the</p> <p>20 definition of pollution in Title 27A indicates that</p> <p>21 you can consider quantities and whether or not it</p> <p>22 constitutes a nuisance or public health threat or</p> <p>23 disrupts a beneficial use, which is also contained in</p> <p>24 the definition you provided. It just doesn't include</p> <p>25 the word quantities.</p>

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<p>1 individuals running the testing --</p> <p>2 A. Yes, I do.</p> <p>3 Q. -- things of that nature? Okay.</p> <p>4 But none of those were provided to you to</p> <p>5 review --</p> <p>6 A. No.</p> <p>7 Q. -- in this case?</p> <p>8 A. No.</p> <p>9 MR. GARRETT: Okay. That's all the</p> <p>10 questions I have, Doctor. Thank you so much for your</p> <p>11 time today.</p> <p>12 THE WITNESS: You're welcome.</p> <p>13 MR. CANTWELL: She'll read and sign.</p> <p>14 (Signature required; witness excused;</p> <p>15 deposition concluded at 12:26 p.m.)</p>	<p>1 J U R A T</p> <p>2</p> <p>3 STATE OF _____)</p> <p>4) SS:</p> <p>5 COUNTY OF _____)</p> <p>6</p> <p>7 I, NANCY COLEMAN, do hereby state under oath</p> <p>8 that I have read the above and foregoing deposition</p> <p>9 in its entirety and that the same is a full, true and</p> <p>10 correct transcription of my testimony so given at</p> <p>11 said time and place, except for the corrections</p> <p>12 noted.</p> <p>13 { } CORRECTIONS ATTACHED</p> <p>14 { } NO CORRECTIONS</p> <p>15 _____</p> <p>16 NANCY COLEMAN</p> <p>17</p> <p>18 Subscribed and sworn to before me, a Notary</p> <p>19 Public in and for the State of _____ by said</p> <p>20 witness, NANCY COLEMAN, this _____ day of</p> <p>21 _____, 20__.</p> <p>22</p> <p>23 _____</p> <p>24 Notary Public, State of _____</p> <p>25 My Commission Expires: _____</p>																																																																												
<p>1 WITNESS NAME: NANCY COLEMAN</p> <p>2 IN RE: Lazy S Ranch v. Valero Companies</p> <p>3 DATE TAKEN: 8/24/2022</p> <p>4 REPORTER: JTS</p> <p>5</p> <p>6 Reasons for making changes are:</p> <p>7</p> <p>8 (1) To clarify the record;</p> <p>9 (2) To conform to the facts; or</p> <p>10 (3) To correct major transcription errors.</p> <p>11</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">PAGE LINE</th> <th style="width: 20%;">CHANGE FROM</th> <th style="width: 20%;">CHANGE TO</th> <th style="width: 50%;">REASON</th> </tr> </thead> <tbody> <tr><td>8</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>9</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>10</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>11</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>12</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>13</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>14</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>15</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>16</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>17</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>18</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>19</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>20</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>21</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>22</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>23</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>24</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>25</td><td>DATE: _____</td><td>WITNESS SIGNATURE: _____</td><td></td></tr> </tbody> </table>	PAGE LINE	CHANGE FROM	CHANGE TO	REASON	8	_____	_____	_____	9	_____	_____	_____	10	_____	_____	_____	11	_____	_____	_____	12	_____	_____	_____	13	_____	_____	_____	14	_____	_____	_____	15	_____	_____	_____	16	_____	_____	_____	17	_____	_____	_____	18	_____	_____	_____	19	_____	_____	_____	20	_____	_____	_____	21	_____	_____	_____	22	_____	_____	_____	23	_____	_____	_____	24	_____	_____	_____	25	DATE: _____	WITNESS SIGNATURE: _____		<p>1 PAGE LINE CHANGE FROM CHANGE TO REASON</p> <p>2 _____ _____</p> <p>3 _____ _____</p> <p>4 _____ _____</p> <p>5 _____ _____</p> <p>6 _____ _____</p> <p>7 _____ _____</p> <p>8 _____ _____</p> <p>9 _____ _____</p> <p>10 _____ _____</p> <p>11 _____ _____</p> <p>12 _____ _____</p> <p>13 _____ _____</p> <p>14 _____ _____</p> <p>15 _____ _____</p> <p>16 _____ _____</p> <p>17 _____ _____</p> <p>18 _____ _____</p> <p>19 _____ _____</p> <p>20 _____ _____</p> <p>21 _____ _____</p> <p>22 _____ _____</p> <p>23 _____ _____</p> <p>24 _____ _____</p> <p>25 DATE: _____ WITNESS SIGNATURE: _____</p>
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<p>1 C E R T I F I C A T E</p> <p>2 STATE OF OKLAHOMA)</p> <p>3) SS:</p> <p>4 COUNTY OF OKLAHOMA)</p> <p>5 I, JILL TUCKER SHAW, C.S.R. for the State of</p> <p>6 Oklahoma, certify that NANCY COLEMAN was by me sworn</p> <p>7 to testify the truth; that the deposition was taken</p> <p>8 by me in stenotype and thereafter transcribed and is</p> <p>9 a true and correct transcript of the testimony of the</p> <p>10 witness; that the deposition was taken on August 24,</p> <p>11 2022, in Oklahoma City, Oklahoma; that I am not an</p> <p>12 attorney for or a relative of either party, or</p> <p>13 otherwise interested in this action.</p> <p>14 Witness my hand and seal of office on this,</p> <p>15 the 8th day of September, 2022.</p> <p>16 <i>Jill Tucker Shaw</i></p> <p>17 JILL TUCKER SHAW, C.S.R.</p> <p>18 Oklahoma Certified Shorthand Reporter</p> <p>19 Certificate No. 01459</p> <p>20 Expiration Date: December 31, 2022</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 M E M O R A N D U M</p> <p>2</p> <p>3 TO: STEPHEN L. JANTZEN</p> <p>4 Attorney at Law</p> <p>5 Ryan Whaley</p> <p>6 400 North Walnut</p> <p>7 Oklahoma City, Oklahoma 73104</p> <p>8 FROM: WORD FOR WORD REPORTING</p> <p>9 620 NORTH ROBINSON, SUITE 202</p> <p>10 OKLAHOMA CITY, OKLAHOMA 73102</p> <p>11 DATE: SEPTEMBER 9, 2022</p> <p>12 STYLE: LAZY S RANCH PROPERTIES, LLC v.</p> <p>13 VALERO TERMINALING AND DISTRIBUTION</p> <p>14 COMPANY, ET AL.; NO. CIV-19-425-RAW</p> <p>15 Please have NANCY COLEMAN read the</p> <p>16 deposition enclosed in the above-styled case and sign</p> <p>17 the jurat page before a notary public. Also, please</p> <p>18 have NANCY COLEMAN make any needed corrections on the</p> <p>19 enclosed errata sheet and not directly on the</p> <p>20 transcript.</p> <p>21 Please return the signed jurat page and</p> <p>22 errata sheet to my office within 30 days of the date</p> <p>23 of receipt so that we can forward the original</p> <p>24 deposition transcript to the attorney who took the</p> <p>25 deposition. If we do not receive the signed jurat</p> <p>and errata sheet back by said date, we will file the</p> <p>original deposition as-is with the attorney who took</p> <p>the deposition.</p> <p>Thank you for your attention and cooperation</p> <p>in this matter.</p> <p>cc: D. Mitchell Garrett</p> <p></p> <p></p> <p></p> <p></p> <p></p>